Authority and Restrictions

2.1 Appointed by the Chief Executive of the Hong Kong Special Administrative Region Government, The Ombudsman has statutory authority to operate with complete independence. The enabling legislation is The Ombudsman Ordinance (the Ordinance), Cap 397, Laws of Hong Kong.

Powers and Functions

2.2 The Ombudsman has a duty to investigate into maladministration, by the public organisations in Schedule 1 to the Ordinance, through processing of complaints or by initiating direct investigation. On 1 July 2002, under the Accountability System, the Chief Executive appointed Directors of Bureaux and Permanent Secretaries in the reorganisation of the Government Secretariat. These changes initially did not affect our jurisdiction as hitherto all Bureaux were classified under "Government Secretariat" in Schedule 1 to the Ordinance. In February 2003, the functions of the Education Department were transferred to the Education and Manpower Bureau and the department ceased to exist. Complaints against the former Education Department will henceforth be recorded under "Government Secretariat". It is likely that other cases of reorganisation under the Accountability System will follow. It is evident from the Education and Manpower Bureau reorganisation that Government wishes to keep The Ombudsman's jurisdiction intact.

2.3 As with most Ombudsman institutions the world over, The Ombudsman has wide investigative powers : e.g. access to all information and summoning of witnesses for cases under investigation. Upon completion of investigation, The Ombudsman ensures that all recommendations are implemented for more efficient and effective services to our community.

Fig. 2.1 Definition of maladministration - Section 2 of the Ordinance

"Maladministration" means inefficient, bad or improper administration and, without derogation from the generality of the foregoing, includes -

(a) unreasonable conduct, including delay, discourtesy and lack of consideration for a person affected by any action;

(b) abuse of any power (including any discretionary power) or authority including any action which -

  (i) is unreasonable, unjust, oppressive or improperly discriminatory or which is in accordance with a practice which is or may be unreasonable, unjust, oppressive or improperly discriminatory; or

  (ii) was based wholly or partly on a mistake of law or fact; or

(c) unreasonable, unjust, oppressive or improperly discriminatory procedures

2.4 The Ombudsman's Office is not a Court of Law and, unlike Court verdicts, The Ombudsman's recommendations are not binding. However, organisations concerned generally respond positively to my recommendations.

RESTRICTIONS

2.5 The Ombudsman's purview is not all pervasive. Section 10 of the Ordinance prescribes restrictions on investigation while Schedule 2 to the Ordinance specifies actions not subject to The Ombudsman's investigation.

Fig. 2.2 Major restrictions on investigation of complaint - Section 10 of the Ordinance

- Complainant having knowledge of subject of complaint for more than two years
- Complaint made anonymously
- Complainant not identified or traced
- Complaint not made by person aggrieved or suitable representative
- Subject of complaint and complainant having no connection with Hong Kong
- Statutory right of appeal or remedy by way of legal proceedings (except judicial review) available to complainant
- Complaint of trivial, frivolous, vexatious or malicious nature

Fig. 2.3 Examples of actions not subject to investigation - Schedule 2 to the Ordinance

- Actions in relation to security, defence or international relations
- Legal proceedings or prosecution decisions
- Exercise of power to pardon criminals
- Contractual or commercial transactions
- Personnel matters
- Grant of honours, awards or privileges by Government
- Actions by the Chief Executive personally
- Imposition or variation of conditions of land grant
- Actions in relation to Hong Kong Codes on Takeovers and Mergers and Share Repurchases
- Crime prevention and investigation actions by Hong Kong Police Force or Independent Commission Against Corruption

My Office critically examines all in-coming complaints to establish whether they come within my statutory purview. If not, we promptly explain why we cannot pursue the complaints; where possible, we point out the appropriate avenues for redress.

2.6 It is not always easy to demarcate the boundaries prescribed in Schedule 2 to the Ordinance. I take a liberal approach, by "screening in" all points which are administrative in nature.

INVESTIGATION PROCESS

2.7 I am assisted by my Deputy, two Assistant Ombudsmen and seven operational teams. I have delegated to each level

specific authority within which they act on my behalf. As a general rule, the work of investigation officers is carefully vetted and monitored by team leaders. Reports and replies are scrutinised by the directorate and then finalised by me. We have a computerised complaint management system, which provides information on individual cases and facilitates compilation of statistics. Since 2000, we have enhanced it to give readier access to information. With its assistance, my directorate and I can monitor the processing of our investigations more closely.

INTERNAL MONITORING

2.8 My investigation teams, therefore, work under close scrutiny. My Deputy and the Assistant Ombudsmen hold meetings regularly with individual teams, to keep tabs on cases under processing. These sessions provide a forum for frank exchange of views and analysis of facts, debate on contentious points and directions for follow-up action. Above all, they ensure consistency in case work and provide opportunities for experience-sharing.

2.9 To keep myself well posted on our operations, I attend meetings of each team at least once a month. In this way, I directly guide investigations, clear uncertainties and discuss strategies on complex cases.

2.10 From time to time, I convene open forums to update staff on concepts, principles and philosophy on matters within my purview. These help to promote mutual understanding and enhance *esprit de corps.* Through these discussions, we refine operational processes and standardise practices.

SECRECY REQUIREMENT

2.11 The law requires that all members of my Office, including myself, must abide by a secrecy code. We must keep the strictest confidentiality on all matters that come to our knowledge in the exercise and execution of our functions. Breach of this code is a criminal offence, which carries a maximum penalty of a fine of $50,000 and imprisonment for two years.

2.12 From time to time, Councillors and civic leaders, members of the public and the media refer complaints to me in the expectation that they would be informed of the progress of processing. We sincerely appreciate their support and warmly welcome their referral. However, we are duty-bound by law not to discuss with, or to disclose to, third parties the processing or the outcome of any case. Except for official publication of an investigation report in anonymised form, we cannot and will not respond to any enquiry on individual complaints other than from the authorised parties. Here, I take the opportunity to thank all who have referred complaints to my Office for their understanding and their respect for our secrecy code.

2.13 Before initiating inquiries, we always seek the complainants' consent to obtain their personal data from organisations concerned and to reproduce their documents to relevant organisations for the purpose of processing their cases.

2.14 The secrecy code is the cornerstone of the Ombudsman system. It is strictly observed by all of us in discharging our duties. The aim is to enable any person or organisation providing information to the

Office can do so without reserve and without fear of possible consequences from the disclosure of their identity or information.

The Ombudsman's Discretion

2.15 Section 9 of the Ordinance gives The Ombudsman wide discretion to undertake or not, continue or discontinue an investigation. This means that I may decide not to pursue a complaint if the subject matter is trivial, frivolous, vexatious or not made in good faith. The same applies to complaints which I consider to be not of maladministration. Exercise of this discretion enables me to maximise the use of resources and hence our services to the community. It also prevents the abuse or misuse of the complaint machinery detailed in **Chapter 5**.

2.16 In view of my statutory independence, my decision on a case is final. Anyone not satisfied with my decision may request my Office to review a case or apply to the Courts for judicial review.